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APR 15 2008

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION
In the matter of

Front Row Tavern
234 E Third Street
Imlay City, MI

Docket No. 2008-215
Agency No. 77097
Agency: Bureau of Construction
Codes
Case Type: Barrier Free Design
Exception Request

Issued and entered
this 14th day of April, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on April 7, 2008, in Lansing, Michigan. Present were Jim Vargo, Vice President of Capac Construction Company representing the Applicant, John Sharp, Building Official for Lapeer County, and Usha Menon, representing the Plan Review Division.

5. EXCEPTION APPLICATIONS
08. 77097

ISSUE

Should the Board grant the Applicant an exception from Section 1109.2 of the 2003 Michigan Building Code (MBC) and Section 404.2.4 of ICC/ANSI A 117.1-1998?

The Applicant agreed to comply with Sections 1110.1 of the MBC concerning signage and Section 404.2.3 of the ANSI code addressing door widths.

FINDINGS OF FACT

In January 2007 a fire in a second floor apartment destroyed the second floor of the building at issue. The Applicant has spent \$90,000 to reconstruct the second floor and added fire suppression measures to the first and second floors. Building and health code changes were also made especially to the first floor tavern area.

The building was constructed in the early 1900s and first used as for meat processing. The first floor has been used as a tavern for 50 years. There is space for 47 customers. The building is restricted from expansion on all sides. The north borders the public sidewalk; the south borders a city alley and parking; the west and east are at the property lines.

The matter of concern is a hallway leading to the bathrooms to the rear of the building. This corridor is 38 inches wide and 10 feet 10 inches long. The corridor is required to be 48 inches wide. But this corridor can't be widened. On one side are the toilets that can't be expanded to the east because the east building wall is at the lot line. The hallway can't be expanded to the west because the kitchen is on the other side.

With regard to the bathrooms, the women's room is 5 feet 4 inches by 7 feet 8 inches. The men's room is 5 feet 6 inches by 7 feet 8 inches. The Applicant will install wall mounted sinks, grab bars, and new compliant toilets. Thirty two inch clear opening

doors will also be added and the bathroom entrances will be reconfigured to allow maximum interior space. Nevertheless, despite these changes, the 5 foot turning circle requirement may not be met. The toe clearance will be provided, but the sinks may intrude on the turning radius.

The bathrooms can't be expanded because there is no space available. Even if completely new bathrooms were to be built, there is no space between the hallway and the east building wall to built completely barrier free facilities.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1109.2 of the 2003 MBC addresses bathrooms in pertinent part:

Toilet and bathing facilities: Toilet rooms and bathing facilities shall be accessible. ... At least 1 of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible.

Section 404.2.4 of the ICC/ANSI code provides:

Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors shall comply with Sections 404.2.4.1 through 404.2.4.7 (Exception omitted)

Compelling need based on space has been presented to justify approval of the Applicant's request for exception. The Applicant will make several modifications to the existing bathrooms to obtain the maximum space possible. New fixtures and new doors will also be added. The hallway to the bathrooms cannot be widened due to lack of space. There is also no space to construct barrier free bathrooms.

RECOMMENDED DECISION

I recommend the Board grant the Applicant exceptions from Section 1109.2 of the MBC and Section 404.2.4 of the ICC/ANSI code.

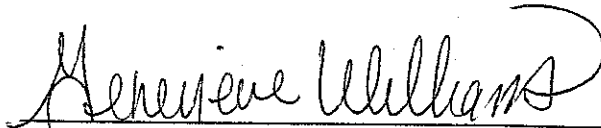
As a condition to granting these exceptions, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 11th day of April, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

James Vargo
Capac Construction Company
216 Hill Street
P.O. Box 388
Capac, MI 48014

John Sharp
Construction Code Authority
1075 Suncrest Drive
Lapeer, MI 48446

CAPAC CONSTRUCTION COMPANY, INC.

December 26, 2007

Mr. John Sharp
Building Official
Construction Code Authority
1075 Suncrest Drive
Lapeer, Michigan 48446

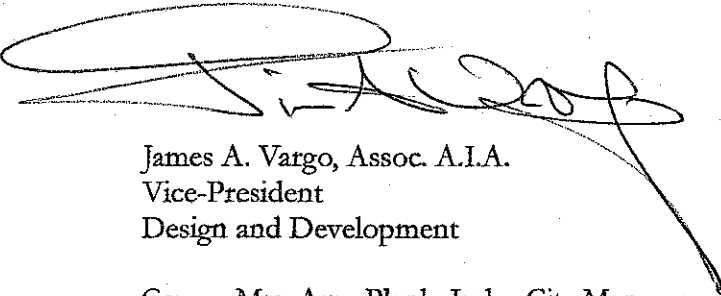
Re: Front Row Tavern, Imlay City
Field Correction Notice, dated 11/28/2007

Dear John,

Pursuant to our phone conversation on December 10, 2007 at 11:30 am, I verbally clarified with you what was the general intent and what was required of me to comply with the Field Correction Notice forwarded to me in regards to Front Row Tavern. You indicated to me that all you and your department wanted are copies of what I turn into the Lapeer County Health Department to comply with their requirements for this project well after permits being issued on this project. You indicated to me that these copies given to you and your department are for your files on this project only.

If you have any questions with what is being submitted to your department to comply with your Field Correction Notice, dated November 28, 2007, please feel free to contact me at my office. Thank you for your time in this matter once again.

Respectfully Submitted,



James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

Cc: Mrs. Amy Plank, Imlay City Manager
Mr. Jerry Edwards, Imlay City Zoning Administrator
Mr. Dan Steckley, Owner

JAV/jv

CAPAC CONSTRUCTION COMPANY, INC.

March 19, 2008

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes
Plan Review Division
P.O. Box 30254
Lansing, Michigan 48909

Re: Front Row Tavern, Imlay City
Project Number: 77-097

Dear Plan Review Division,

Enclosed you will find my list of Michigan Building Code Sections that have been applied to my project in regards to Michigan Barrier Free Code requirements. These are the sections that I do not comply with and are now asking for Variances from your board. I did re-submit this application back to the Construction Code Authority who issued me my permit for this project as indicated in your letter to me dated February 29, 2008, but the only thing they, the Construction Code Authority, sent me back was a fax copy of the introduction page to the Barrier Free Design book with a circle around the reason for non-compliance. When I asked them for the information the application and the State sought, specific code sections of non-compliance, Mr. John Sharp, Building Official of Construction Code Authority told me and instructed me to come up with your own list of code sections you do not comply with because this is your application for variances. So in the spirit of getting this project done sometime this year as well as doing the job of the permitting agency who cited me on this project for non-compliance, copy enclosed, I came up with the following code sections that this existing building does not comply with in regards to Michigan Barrier Free requirements. This list was gone over verbally in person with Mr. John Sharp this morning in his office and he acknowledged this list of code sections to be attached to the application and added the note to the original application, "see attached sheet" and initialed the note. The code sections are as follows;

1110.1 Signage - Restrooms

1008.1.1 Door Sizes

404.2.3 Door Sizes

404.2.4 Maneuvering Clearances at Doorways

304.3.1 Wheel Chair Circulation Space

604.3 Clearance Toilet

605.3 Clear Floor Space - Urinal

604.5.1 Side Wall Grab Bars

604.5.2 Rear Wall Grab Bars

March 20, 2008

606.2 Clear Floor Space – Lav Sink

306.2 Toe Clearance – Lav Sink

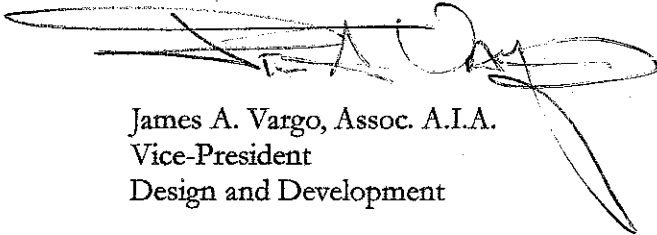
306.3 Knee Clearance – Lav Sink

309.4 Faucet Operation – Lav Sink

Upon looking at this list of code sections that need to be complied with to meet Barrier Free Codes, some sections can be achieved in the existing restroom spaces while some sections cannot and will require variances from the board. I would love the opportunity to go over these code sections items at the initial plan review to give further information that will hopefully help in getting my variances for this project as well as showing the Board that I can and will meet the general intent of the Barrier Free Codes in the areas I can on this project.

Thank you for your time in this matter and looking forward to working with you in achieving code compliance in Michigan as well as completing this nice old existing landmark building in downtown Imlay City.

Respectfully Submitted,



James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

Enclosures

Cc: Mrs. Amy Planck, Imlay City Manager
Mr. Jerry Edwards, Imlay City Zoning Administrator
Mr. Dan Steckley, Owner

JAV/jv

CONSTRUCTION CODE AUTHORITY

December 11, 2007

Capac Construction
216 Hill Street
Capac MI 48014

Re: 234 E Third Street
Front Row Tavern
City of Imlay

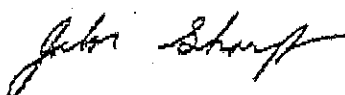
Dear Mr. Vargo:

Please be advised that after a complete review of the building permit and original blueprints, it now appears that the re-construction of the above referenced fire repair does exceed the scope of work that was on the application. This additional work is in excess of 50%; therefore the building must be brought into current compliance with barrier free codes per Public Act No. 1 of the Public Acts of 1966, as amended. Please find a copy of the introduction page of the 2003 Michigan Barrier Free Design Graphics Manual for your reference.

Revised plans must be submitted along with a building application, detailing the additional work being done.

If you wish, you may apply for a Construction Board of Appeals.

Sincerely,



John Sharp
Building Official
City of Imlay

/sw

cc: File
City of Imlay

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DEC 12 2007

2007-12-12 10:00 AM
PLANNING DEPARTMENT

3 pages

Introduction

Barrier free design has been a public policy in Michigan since 1966, when Public Act No. 1 of the Public Acts of 1966, as amended, was made into law. It is intended to assure that the built environment in Michigan is accessible and usable for all citizens, including elderly persons, wheelchair users, and persons with permanent or temporary conditions that reduce coordination or mobility or makes walking difficult or insecure. It is also intended to assure that persons with visual or hearing impairments will be able to use facilities safely.

Under the State of Michigan Construction Code Act, Public Act No. 230 of the Public Acts of 1972, as amended, all local units of government will now be administering and enforcing one state-wide set of construction codes. These construction codes will not be subject to local modification. This has always been the case for the Michigan barrier free design requirements. Every local unit of government must enforce these requirements as part of any local code enforcement program in accordance with Public Act 230.

Michigan's Barrier Free Design Law

When barrier free design was implemented as public policy in 1966 by Public Act No.1, the law applied to almost exclusively to government-owned buildings and facilities. In the middle 1970's, in response to demands made by handicappers who were committed to living independently rather than in institutional settings, the law was amended to assure that buildings where employment opportunities existed and where services to the public were available (schools, retail stores, restaurants, churches, hotels, etc.) were also addressed.

Everyone agreed that new construction should be barrier free. There were considerable differences of opinion about what, if anything, should be done regarding existing buildings. Handicappers argued that all existing buildings should be immediately retrofitted and made barrier free since so many opportunities for employment, housing, recreation, shopping, worship, etc were housed, and would continue to be housed in existing structures. Building owners argued that they had constructed their facilities in compliance with the codes in effect at the time of construction and should not be penalized because of changing public policy in the area of barrier free design.

Michigan lawmakers, faced with this difference of opinion about what should be done for existing buildings, concluded by stating in law that an existing building undergoing a change in use group, occupant load, or an alteration would be required to be made accessible to some extent.

* If the change affected less than 50% of the existing floor area, only the affected area and a barrier free route to it, from and including the nearest entrance, would be required to be barrier free. If the change affected 50% or more of the existing floor area, the entire facility would be required to comply with the barrier free design requirements. *

At the time this standard was enacted, Michigan lawmakers recognized that at times the standard could present difficulty to building owners. So, at the time the standard was enacted, the legislature also created the Barrier Free Design Board and authorized the Board as the only agency in the state with the authority to grant exceptions (variances) to the barrier free design requirements.

Reason for non-compliance

CAPAC CONSTRUCTION COMPANY, INC.

January 10, 2008

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes/Plan Review Division
Barrier Free Design
P.O. Box 30255
Lansing, Michigan 48909

RECEIVED

Re: Barrier Free Variance Request

FEB 21 2008

Front Row Tavern
234 East Third Street
Imlay City, Michigan 48444

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Dear Barrier Free Design Review Board,

Enclosed you will find my application seeking variances to Barrier Free Design, 2003 Edition. These variances will cover the existing restrooms, hallway and other Barrier Free elements associated with the restrooms and the building in general. Prior to the Construction Code Authority issuing a permit for this project, Permit # 07-002092, its Building Official, Mr. John Sharp and myself reviewed the project in question and came to a understanding, that the damage from the fire in this building to the first floor was minor and work on this floor would be considered general maintenance as per building codes. So, general maintenance work to this first floor area as well as code related work required for the reconstruction of the second floor, that the Barrier Free Issues on the first floor would be not be considered for a permit and future re-occupancy of the facility. This agreement between the Code Authority and myself held firm and a permit for this project was issued after the plans were reviewed and revised based upon plan reviews. During the plan reviews and plan revisions required, it was never made clear to me that I should revise my permit application by the Code Authority, which historically with the Code Authority in all my experiences with them, I have never amended or revised my original permit application to have it coincide with what plans have gained approval for permits after plan revisions.

The project in question is well into construction and was forced to have work stopped by the Lapeer County Health Department. This stoppage of work was enforced by the Code Authority upon receiving a call from the Director of the Health Dept., Mr. Mitch Caskey. It was at this time that the Health Dept. informed me that they were in the process of getting information on this project prior to any work being done as per State Health Codes. They, the Health Dept were sending correspondence to one of the building's owners, who from prior to construction commencement, has left the State of Michigan and none of that correspondence made it to the other owner or myself. It was at this time, the Construction Code Authority issued Field

216 HILL STREET P.O. BOX 388 • CAPAC, MICHIGAN • 48014-0388
PHONE: 810-395-7135 • FAX: 810-395-2786

Correction Notice as well as letter explaining to me that now the building must now be brought up to full compliance of Barrier Free Code due to I had exceeded the 50% rule, copy attached to application.

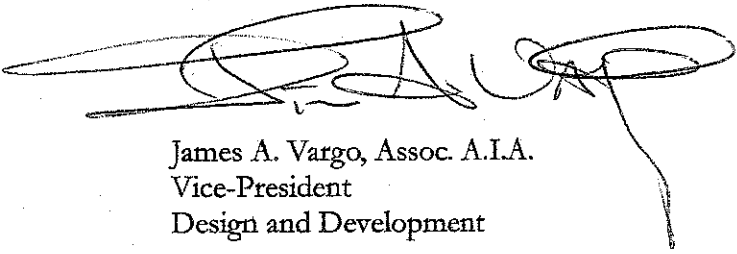
With all the work that has been done and unforeseen conditions to the building having to be handled to prevent future issues, the Code Authority now wants more done to the building after they have issued a Permit for the project and they are using the Health Dept. as the main reason to get these new Barrier Free issues into compliance. Please see attached scope of work correspondence that was submitted to the Health Dept for this project. It should be known here that there has been a long standing policy between the Code Authority and the Health Dept. that any plans that come into Code Authority with commercial kitchens in them, that the Health Dept get them first and approve them prior to and reviews and permits issued by the Code Authority. It is clear that the Code Authority missed that very important step, and my client must now pay for their errors. I am in the process of complying with the Health Department for this project thru an agreement between myself and its Director. They will withdraw the Stop Work Order to the Code Authority when the plans submitted to them are sufficient enough to complete their review and approvals.

I hope & pray that this Barrier Free review Board will see thru this, and grant a Variance for the existing restrooms and related items for this existing building that is 100 years old. The existing building is located in the downtown Imlay City area. The building has zero lot lines to each side of it, a public sidewalk to the front of the building and an alley to the rear. The only way barrier free restrooms could be achieved is with an addition to the rear of the building and that would be very difficult given some of the requirements now being given to me by the Health Dept. for a new walk in cooler for this project. See Sheet EQ-2 for layouts of the existing restrooms and the proposed location of the new cooler. I can further explain the current situation at the formal plan review for this variance. I also hope that the review board can see that the cost of this compliance to barrier free codes is excessive to the cost amount of bringing the building back to an open facility.

I can offer this alternative that would help in the general intent of compliance to the barrier free code. I can reconfigure and install 36 inch wide doors for the existing restrooms, but as you can see from sheet EQ-2, the existing restrooms are of a size that will not allow a clear 60 inch turning circle, the toilet and lav sink impede that circle.

If you have any more questions with this submitted information, please feel free to contact me at my office to clarify any item you need. Thank you for your time in this matter and looking forward to working with this board on my project to obtain variances for Barrier Free Exceptions.

Respectfully Submitted,



James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

Enclosures

JAV/jv

CAPAC CONSTRUCTION COMPANY, INC.

January 10, 2008

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes/Plan Review Division
Barrier Free Design
P.O. Box 30255
Lansing, Michigan 48909

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FEB 21 2008

Re: Project Cost Estimates

Front Row Tavern
234 East Third Street
Imley City, Michigan 48444

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Dear Barrier Free Design Review Board,

Enclosed you will find a brief breakdown of cost estimates on this job. You will find the original cost estimate to make the necessary repairs originally. Then you will find the cost estimates of additional items that were made to be required for this project by the plan review/permit process by the Construction Code Authority. A permit was issued for this project by the Construction Code Authority, Permit # 07-002092. Enclosed also you will find a cost estimate to bring the building up to Barrier Free Code, 2003 edition.

Original Project Cost: \$ 95,000.00

**Additional Items required
By Construction Code from
Plan Reviews**

- | | |
|--|-------------|
| 1. First Floor Suppression | \$ 5,000.00 |
| 2. Revised Second Floor Support
Beam & Columns | \$ 2,400.00 |
| 3. Revised First Floor Fire Walls | \$ 1,800.00 |
| 4. Kilz Stain First Floor Entire
Area to prevent mold & Mildew
Drywall insulation, due to rain
Damage from CCA Stoppage | \$ 1,000.00 |
| 5. New 2" water main into Bldg
For new Fire Suppression | \$ 4,500.00 |

Revised Project Cost: \$ 109,700.00 *

- * This revised cost estimate is based upon construction and maintenance work needed to bring building back open status. This amount does not include and additional work that will be required by the Lapeer County Health Department, if any.

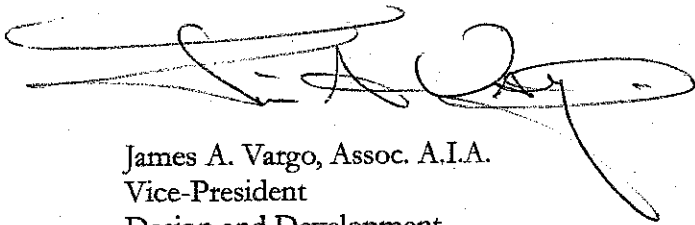
Estimate Cost for Barrier Free Compliance

1. Site Plan Documents & Site Plan Review Approvals	\$ 3,500.00
2. Construction Documents & Specs	\$ 5,000.00
3. Building Demo for Addition To Comply w/ B/F Codes	\$ 3,500.00
4. Relocation of Existing Bldg HVAC & Kitchen Exhaust	\$ 2,000.00
5. Barrier Free Restroom Addition & Rear Entry	\$ 56,000.00
6. Interior Renovations to removed Old restrooms	\$ 2,000.00
Estimate Cost To Comply:	\$ 72,000.00 **

** The existing building dates back to the early 1900's and the existing restrooms and kitchen were added into an addition to the existing building back in the early 1950's as information has been given to me as to current age and changes to the building in question.

If you have any more questions with this submitted information, please feel free to contact me at my office to clarify any item you need. Thank you for your time in this matter and looking forward to working with this board on my project to obtain variances for Barrier Free Exceptions.

Respectfully Submitted,



James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

JAV/jv

CAPAC CONSTRUCTION COMPANY, INC.

January 7, 2008

Ms. Jeannie Roteman' Bustle, R.E.H.S./ R.S
Food Program Specialist
Environmental Division
1800 Imlay City Road
Lapeer, Michigan 48446

RECEIVED

FEB 21 2008

Re: Summary Scope of Project

Re-Establish Food Establishment
Front Row Tavern
234 East Third Street
Imlay City, Michigan 48444

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Dear Jeannie,

The main intent of this project is to re-open the Tavern to the public for business after the fire that occurred in the building in January of 2007. I have outlined below in a simple bullet format the scope of work to be completed to accomplish this task. The scope of work is as follows,

1. Remove fire damaged portions and dispose of waste from the second floor as per plans.
2. Remove fire and water damaged elements found on the first floor as per plans.
3. Reconstruct the second floor and roof as per plans due to fire.
4. Install new second floor support wood beams and steel support posts as per revised plans and per Michigan Building Codes, 2003 Edition. This addition of new wood support beams was for the allowance of 125 lbs. per sq. ft. loading on the second floor as per codes, thus the existing wood beam and posts were removed and replaced with new.
5. Install new shingle roof and ventilation as per plans.
6. Install new vinyl siding and windows to the exterior of the building as per plans.
7. Repair, clean and maintain first floor elements as per plans or as required when needed or found due to fire. This work is to be done under general maintenance provisions of building code. This repair and maintenance work that is to be done is and was acknowledged to be done by the Construction Code Authority prior to that department issuing us a building permit.
8. This maintenance work acknowledgement was made by Mr. John Sharp, Building Official of the Construction Code Authority prior to the CCA issuing a permit for this project. Mr. Sharp's rationale for this administrative decision, was so far as the first floor

area would remain the same except for the maintenance work to be done, thus Barrier Free issues and code elements would not have to be addressed during renovation work. I.e., existing tavern area, existing restrooms, existing kitchen and equipment, existing bar and bar coolers, existing roof top HVAC unit, existing roof top kitchen hood exhaust fan and existing kitchen hood ANSUL Fire suppression system.

9. As per plan reviews, revisions and issued permits, install fire suppression on both first and second floors, as per Michigan Building Codes, 2003 edition.
10. As per plan reviews, revisions and issued permits, install insulation in all walls and ceilings as per Michigan Building Codes, 2003 Edition.
11. As per plan reviews, revisions and permitting, install new electrical on the first and second floors as per plans and Michigan Building Codes, 2003 edition.
12. Install new light fixtures as per plans as well as replace the fire damaged fixtures from the fire in Jan. 2007.
13. As per plans and issued permits, install new gypsum board on walls and ceilings. Gypsum board to be primed and painted as per finish schedules. Some of the existing walls on the first floor will have to be re-done in gypsum board because we had to kilz stain the wall structure and its other members to prevent and protect from possible mold and mildew issues that have occurred in the building during the thawing out of the building during the summer months. The fire occurred in Jan. of 2007, and the water that was used to extinguish the fire froze in the building. Upon thawing, this water went down from the second floor area into the walls and floor areas on the first floor. Another reason for this Kilz Stain work is that the Construction Code Authority inspectors stopped work when we were given permission from these inspectors to put the new roof on the structure to prevent more damage. The CCA plan reviewer could not make up his mind on several un-related issues to this roof work. This work stoppage act on their behalf during reconstructing of the second floor may have caused more un-wanted damage that we needed to address and prevent, thus the Kilz stain application to the walls and floors. This issue was done to protect the public and others from a potential health hazard. This work is allowable under Michigan Building Code, 2003 Edition, Section 34, Existing Buildings.
14. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, install new carpet and VCT flooring on first floor to replace the fire damaged flooring from the fire in Jan. 2007.
15. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, paint and re-paint walls and ceilings as per plans and finish schedules.
16. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, clean and make ready for re-use of the existing kitchen and existing equipment.
17. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, clean and make ready for re-use of the existing restrooms and rear hallway.
18. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, clean and make ready for re-use of the existing roof top HVAC unit and the existing roof top kitchen exhaust fan.

January 7, 2008

19. As per plans and with the full understanding of this first floor maintenance work to be done by the Construction Code Authority prior to permit issuance, repair or replace any broken copper water lines due to their being not properly drained thusly froze after the fire in Jan. of 2007.

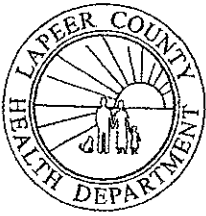
If you have any more questions with this submitted information, please feel free to contact me at my office to clarify any item you need. Thank you for your time in this matter and looking forward to working with you on this project and future projects.

Respectfully Submitted,

James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

Cc: Mrs. Amy Planck, City of Imlay City, City Manager
Mr. John Sharp, Building Official, Construction Code Authority
Mr. Dan Steckley, Property Owner

JAV/jv



LAPEER COUNTY HEALTH DEPARTMENT

ENVIRONMENTAL DIVISION

1800 Imlay City Rd.-Lapeer, MI 48446

(810) 667-0392 - Fax # (810) 667-0283

Capac Construction
C/O: Jim Vargo
216 Hill St.
Capac, MI 48014

Date: November 26th, 2007

RECEIVED

FEB 21 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RE: Stop Work Order

Proposed Food Establishment:
Front Row Tavern
234 East Third Street

Dear Mr. Vargo,

It has come to the attention of this department that your establishment is being remodeled /constructed without the required prior approval of plans. Michigan's food law, Public Act 92 of 2000 as amended, states in section 6113(2):

"The director shall order the license applicant or license holder in writing to cease construction, alteration, conversion or remodeling activities if the applicant or license holder does any of the following:

- (a) Fails to submit required plans and specifications for the construction, alteration, extensive remodeling or conversion to use as a food service establishment.
- (b) Fails to construct, alter, extensively remodel, or convert a food establishment in accordance with plans and specifications approved by the director.
- (c) Fails to take corrective action as required pursuant to this section."

Any further construction of your food establishment must cease immediately.

Failure to comply with this stop work order may result in legal action. Please contact me as soon as possible to resolve this situation.

Please contact me at 810-245-5789. Thank you for your continued cooperation.

CC: Mr. Daniel Steckly
Lapeer CCA

Sincerely,

Jeannie Roteman'Bustle R.E.H.S./RS
Food Program Specialist

Jeannie Roteman'Bustle
Sanitarian

Rec 12/10/07

Construction Code Authority

1075 Suncrest Dr.

Lapeer, MI 48446

Phone: 810-667-0420 Fax: 810-667-2952

FIELD CORRECTION NOTICE

Permit: 07-002092 Building comm.

Applicant:

CAPAC CONSTRUCTION
216 HILL ST
CAPAC MI 48014

Date Inspected: 11/28/2007

Time Inspected: 3:56:47 PM

Location: THIRD ST, E 234

The following violation(s) were in evidence and must be corrected. This notice may have generated an additional charge on your permit. Please contact the office.

STOP WORK ISSUED UNTIL THIS DEPARTMENT RECEIVES LAPEER COUNTY HEALTH DEPARTMENT RELEASE, AND FIRST FLOOR AND KITCHEN PLANS SUBMITTED TO THIS DEPARTMENT

Inspector Signature: John Sharp

11/30
12/10 Called John S. not in. Gave w/call John
on cell phone, to call me
12/10 John called me
he told me he gave someone, (he don't know who)
to type up letter about 51% violation. Still not
here. will call back w/ who was to do letter
just wants plans w/ give to H.D. for there files
to get this notice.
rec 12/10/07

CAPAC CONSTRUCTION COMPANY, INC.

December 12, 2007

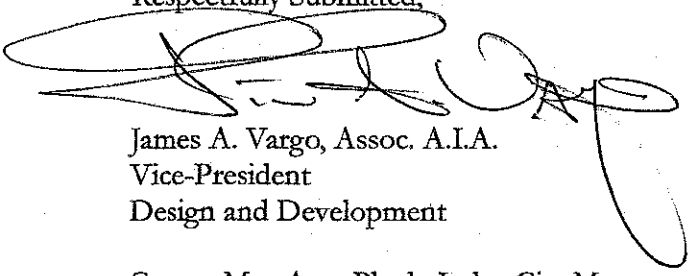
Mr. John Sharp
Building Official
Construction Code Authority
1075 Suncrest Drive
Lapeer, Michigan 48446

Re: Front Row Tavern, Imlay City
Permit Number: 07-002092

Dear John,

Thank you for calling me back this past Monday morning. As of today, I still do not have anything in writing from your office or department that indicates to me and my client the results of the meeting that took place at Imlay City, City Hall back on November 29, 2007 at 2:00pm. No minutes were taken at this meeting. I have heard from various people who attended this meeting what your department's new position is on how your department would like us to finish the project cited above. But, until I get something in writing from you or your department as to what you want me to do now after you issued me a permit for this project is only delaying me from finishing this project and my client on closing with the new owners. When you finally send me something in writing, can you please site the specific Michigan Building Code section number's and title's that you used to help you and your department make this new decision in that meeting on Nov. 29. This information will aid me in verifying that you used these sections in your conversations at this meeting with those who attended it as well as my responses to you as well as others in this new matter your department has now given me to respond to. I would like to get this matter taken care of as soon as possible with either your appeals board or the State of Michigan. Thank you for your time in this matter well after the fact.

Respectfully Submitted,



James A. Vargo, Assoc. A.I.A.
Vice-President
Design and Development

Cc: Mrs. Amy Plank, Imlay City Manager
Mr. Jerry Edwards, Imlay City Zoning Administrator
Mr. Dan Steckley, Owner

JAV/jv

RECEIVED

FEB 21 2008

Application for Barrier Free Design Rule Exception

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Division

P.O. Box 30255, Lansing, MI 48909

517-241-9328

www.michigan.gov/bcc

77097

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application Fee: \$300.00

Authority: 1986 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.
---	--

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME FRONT ROW TAVERN		STREET / SITE ADDRESS 234 E THIRD STREET	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of IMLAY CITY		COUNTY LAPEER	
Estimated Project Cost \$ 95,000.00		Estimated Cost of Compliance \$ 72,000.00	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number 07-002092	
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP A-2
			CONSTRUCTION TYPE 5B
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) Reason for Non-Compliance SRR NOT START RES			
NAME JOHN SHARP		ENFORCING AGENCY CONSTRUCTION CODE AUTH.	TELEPHONE NUMBER (Include Area Code) 810-667-0420
ADDRESS 1075 SUNCREST DR.		CITY LAPEER	FAX NUMBER (Include Area Code) 810-667-2952
BUILDING OFFICIAL SIGNATURE (Must be an original signature) John Sharp			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME WILLIAM FOWLER PE		MICHIGAN LICENSE NUMBER 16183	FIRM NAME -
ADDRESS BOWERS RD.		CITY ATTICA	STATE MICH
		ZIP CODE 48412	TELEPHONE NUMBER (Include Area Code) 810-245-1565
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE JAMES A. VARGO ASSOCIATES		COMPANY NAME CAPAC CONST. CO.	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
ADDRESS 216 HILL STR.		CITY CAPAC	STATE MICH
P.O. Box 388		ZIP CODE 48014	TELEPHONE NUMBER (Include Area Code) 810-395-7135
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.			FAX NUMBER (Include Area Code) 810-395-2786
APPLICANT SIGNATURE (Must be an original signature) [Signature]			DATE Jan. 7, 2008

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

The Counseling Center PC
319 Park Street
Plainwell, MI

Docket No. 2008-370

Agency No. 77502

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

RECEIVED

APR 16 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Issued and entered
this 15th day of April, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held in Lansing Michigan on April 7, 2008. Present were Cheryl Roggow, Owner and John Roggow, Board Member, representing the Applicant and Usha Menon, representing the Plan Review Division.

ISSUE

Should an exception be granted the Applicant from Section 1104.3, of the 2003 Michigan Building Code (MBC).

FINDINGS OF FACT

Cheryl Roggow is a licensed clinical social worker in private practice specializing in addiction issues and family counseling. John Roggow is her husband and a member of the corporate board. Ms. Roggow was previously employed in Kalamazoo addressing the same issues but decided to move her work to Plainwell, the family's hometown, after the near death of their son due to a methamphetamine overdose.

The corporation purchased the building at issue in February 2007 for \$90,000. The basic structure was constructed in the 1890s as a two story unit. This portion of the building is leased as an apartment. Sometime in the mid 20th century, a 2400 square foot addition was added. After World War II the building was given to the American Legion. At this time a lift was put in place to provide access to the basement and main portion of the building. This level is 5 feet 8 inches below grade. A foyer houses the lift. The photo marked as Applicant Exhibit 1 shows the two story portion, the lower attached 2400 level, and the foyer.

At the time of purchase, the lower level had been flooded and vacant for 4 years. It had been used as a day care center for 5 years before and an art studio before that. After purchase and after the remodeling was almost complete, the Applicant was told in early 2008 that the lift was not certified. This is the same lift that had been used by the American Legion, the art studio, and the day care center without problem. The Applicant has spent \$100,000 for renovation of this space including \$20,000 for a new lift. This involved mortgaging the family home. The Applicant hopes to move in and begin work on May 1, 2008. A temporary Certificate of Occupancy was issued February 1, 2008.

The issue now presented is access to the 2400 square foot counseling area

from the lift. The area at the bottom of the lift is 3 feet 10 and $\frac{1}{2}$ inches by 6 feet 2 and $\frac{3}{4}$ inches; a 5 foot by 5 foot area is required. This area cannot be expanded without taking out and rebuilding the concrete steps leading from grade to the lower level. This would also require reconstructing the foyer measuring 18 feet by 15 feet. The Applicant estimates that this would cost an additional \$60,000. The building purchase and remodeling effort including a new lift have depleted the Applicant's resources.

Ms. Roggow pointed out that all clients will be seen with an appointment. Anyone who has a difficulty in accessing the building can be seen in the client's own home or any other location. But Ms. Menon pointed out that the deviation is small and most wheel chair users will be able to access the lower level.

There will be little traffic to the counseling center. Only Ms. Roggow, a massage therapist, and clients will access the lower level. It is possible an acupuncturist may be employed in the future.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have

uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1104.3 of the 2003 MBC addresses connected spaces:

Connected spaces. When a building, or portion of a building, is required to be accessible, an accessible route shall be provided to each portion of the building, to accessible building entrances, connecting accessible pedestrian walkways and the public way. Where only one accessible route is provided, the accessible route shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.

It will be expensive to make the additional changes needed to make the bottom landing comply with the 5 feet by 5 feet dimension. The Applicant has already spent \$190,000 purchasing and remodeling the structure including installing an unexpected new lift.

Compelling need has been presented based on the following:

1. A change in occupancy load from a day care center to a limited use counseling center;
2. Cost; the amount already expended has depleted the Applicant's resources;
3. The nature of the business; aside from anticipated clients, no one will use the business aside from Ms. Roggow and a massage therapist;
4. The degree of variance from the required dimension is small;
5. The Applicant is willing to see any client unable to access her office in

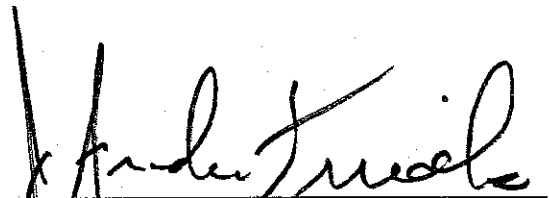
the client's own home or at another site;

6. Finally, the Applicant only learned of the non compliance issue after having purchased the building and spent a considerable sum believing the existing lift was certified for use.

RECOMMENDED DECISION

I recommend the Board grant the Applicant's request for an exception from Section 1104.3 of the 2003 Michigan Building Code regarding access to the building lower level from grade.

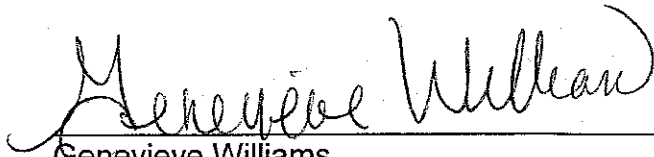
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 1st day of April, 2008.

A handwritten signature in cursive script, reading "Genevieve Williams", written over a horizontal line.

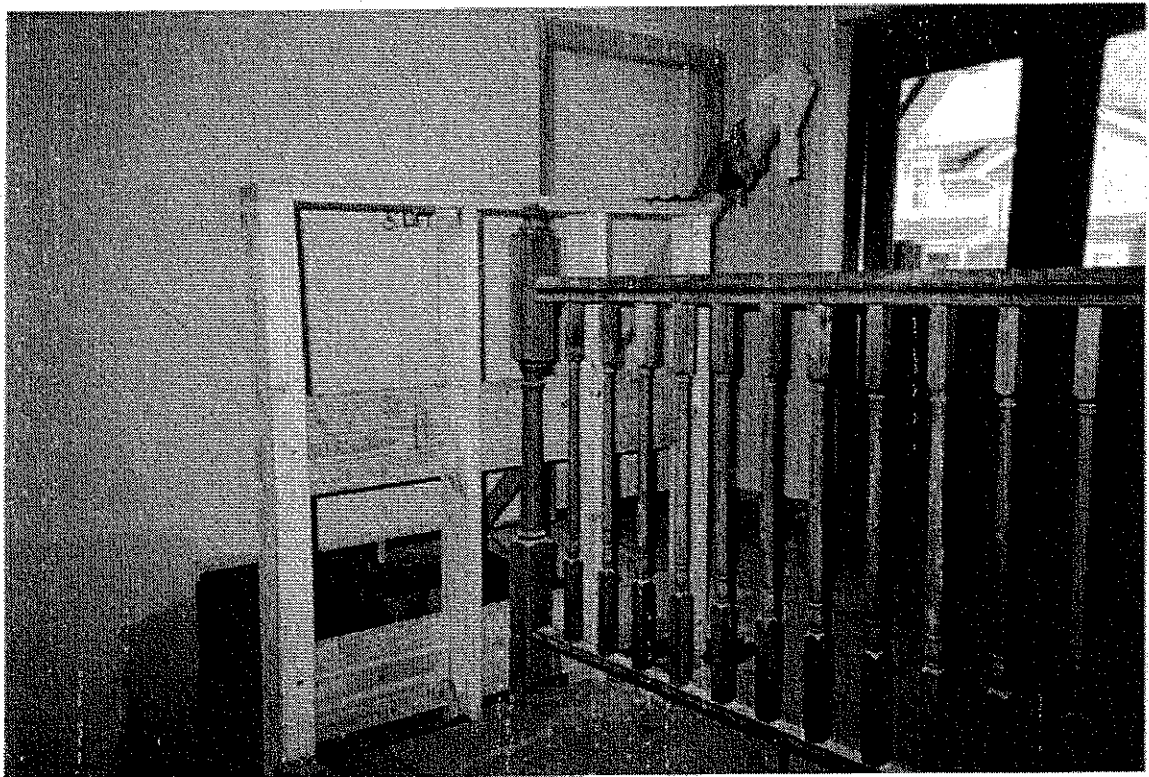
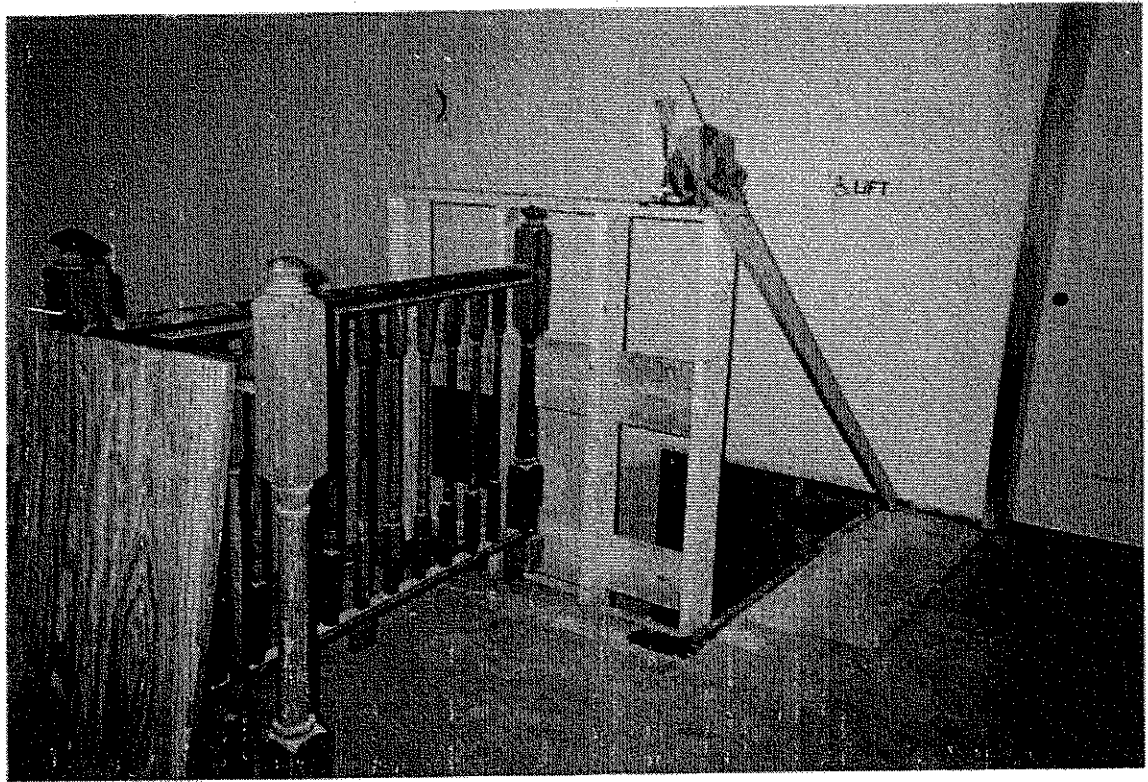
Genevieve Williams

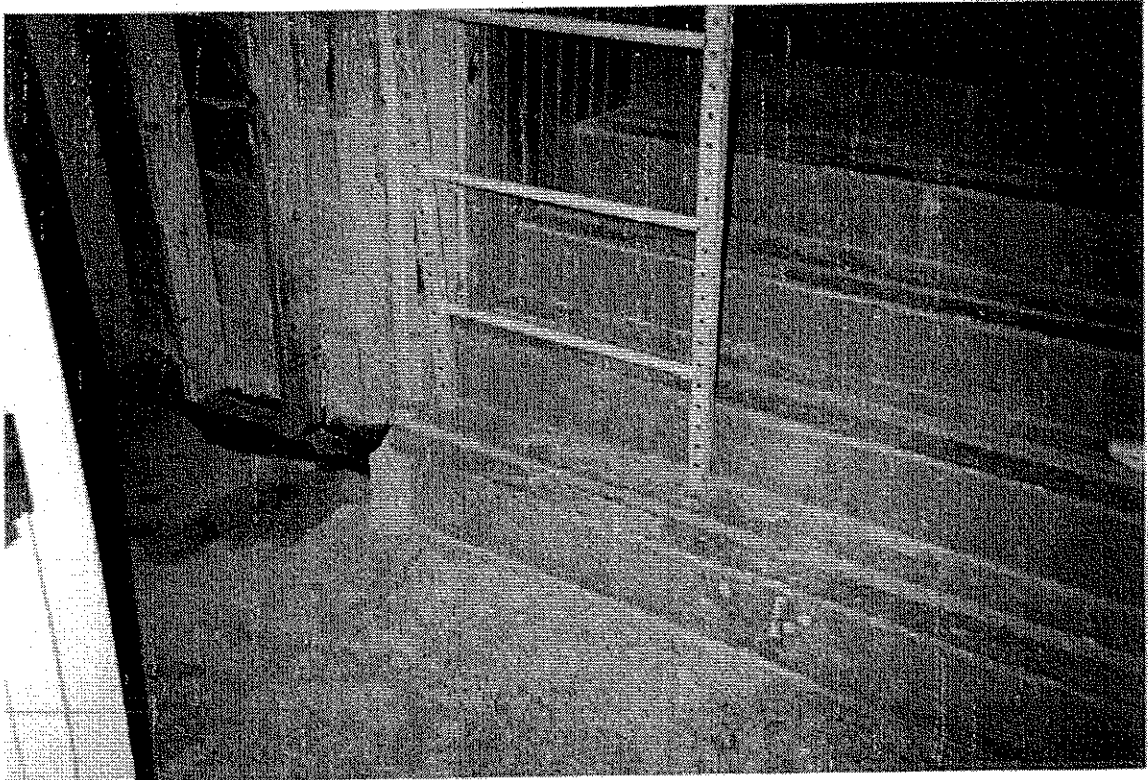
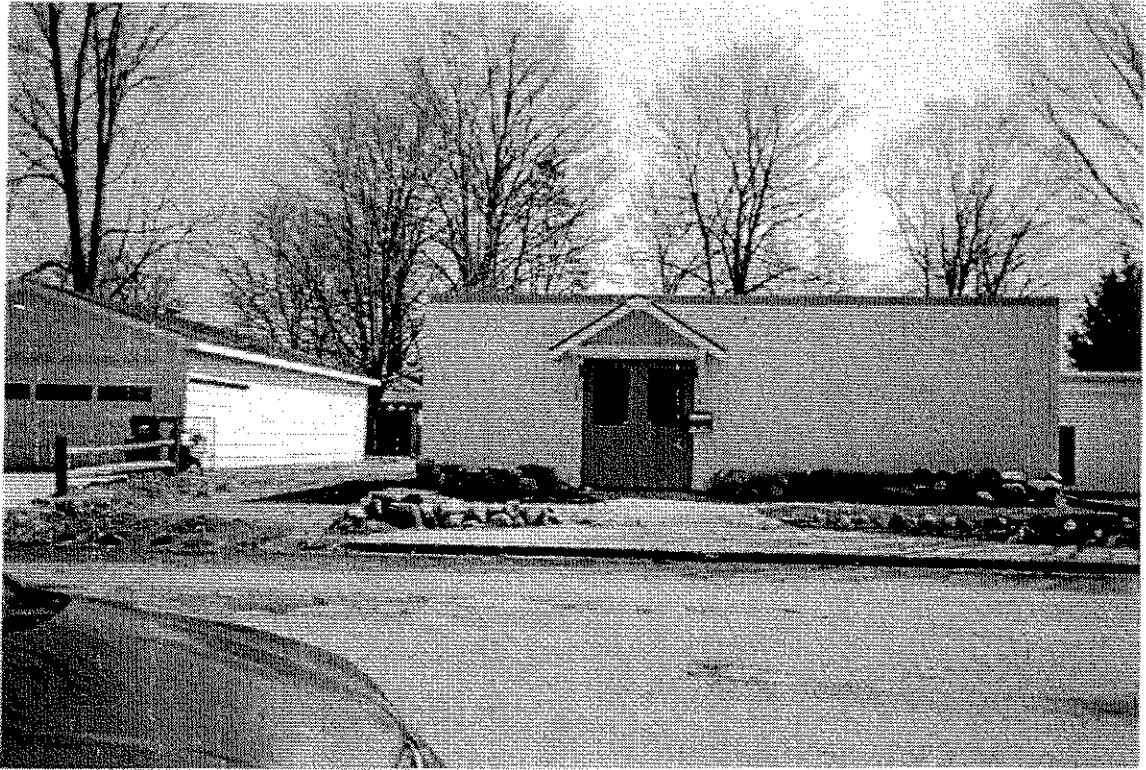
State Office of Administrative Hearings and Rules

Cheryl Roggow
The Counseling Center
The Counseling Center PC
319 Park Street
Plainwell, MI 49080

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Kirk R. Scharphorn
City of Plainwell
1575 142nd Street
Dorr, MI 49323





P.A.L. Vertical Wheelchair Platform Lift

Phone (269) 341-9660 Fax (269) 341-9670

FREEDOM LIFT INC

2851 SUMMERDALE
KALAMAZOO MI 49004

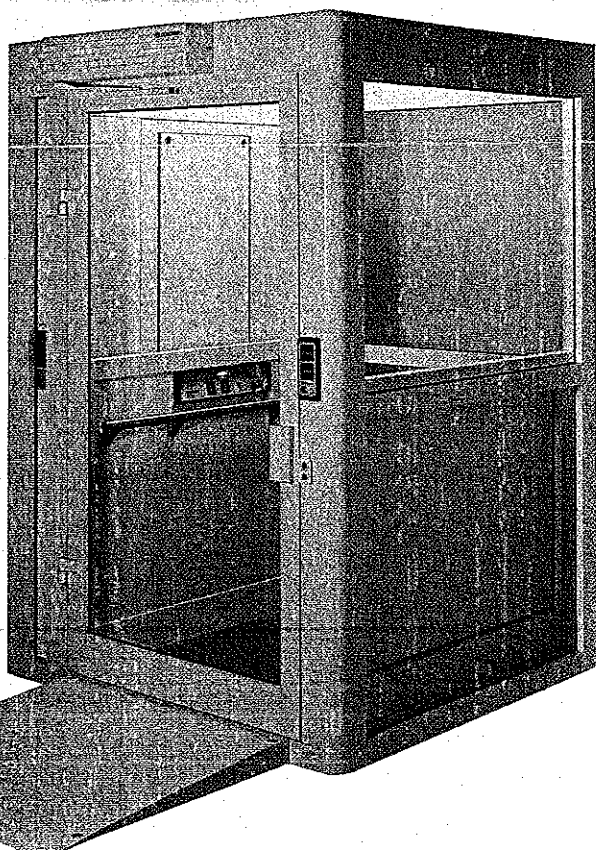
SUPERIOR VALUE

Stainless steel construction is standard on the hydraulic drive for the ultimate in corrosion protection.

A vertical platform lift provides a safe and reliable means of access for your home or commercial building. The P.A.L. (Personal Accessibility Lift) presents an affordable solution with a pleasing appearance and is designed for use in either indoor or outdoor applications.

At Concord we understand you want high quality, but also appreciate you want superior value for your money. The P.A.L. features a choice of smooth and quiet drives including an economical screw drive or a higher speed hydraulic drive.

P.A.L. EN



CONCORD
ELEVATORS & LIFTS

Once you have made the decision to install a P.A.L., you must decide whether your application warrants a hydraulic drive or if you wish to proceed with a screw drive.

P.A.L. PRODUCT LINE

P.A.L. standard features for all models include:

- Entire unit has a baked enamel gloss finish in architectural white
- 409 stainless steel guide rails provide smooth joints and a stable ride
- Structural design eliminates deflection and unwanted cab movement
- Emergency manual lowering device located outside the unit for easy, safe and effective passenger descent in the event of an emergency
- Rollerized guide shoes mounted to a honeycomb reinforced cantilever sling arrangement provide a smooth stable ride

HYDRAULIC DRIVE: P.A.L. S & P.A.L. EN

The hydraulic drive P.A.L. has the following additional standard features:

- 1:2 cable hydraulic drive for smooth starts and stops
- 15 foot/minute nominal speed
- Slack rope safeties that instantly lock preventing any free fall
- Twin lip cup high performance seal provides for cylinder rod stability and virtually eliminates leakage
- Lift frame and hardware are made from commercial grade 409 stainless steel to withstand conditions indoors and outdoors
- Aluminum cab walls further enhance the corrosion resistance
- Car operating panel comes with large 2" raised buttons
- Pump and control are mounted in NEMA 3R rated enclosure providing protection from the elements while allowing for easy maintenance access
- Painted stainless steel handrail
- Stainless steel flooring with applied "Altro" skid resistant flooring
- Emergency battery operation for continued use in both the up and down direction in the event of a power failure
- Back-up lighting powered by emergency battery

SCREW DRIVE: P.A.L. SD & P.A.L. SD-EN

The screw drive P.A.L. has the following additional standard features:

- Stationary screw drive system with rotating nut provides efficient operation with minimal maintenance requirements
- 8 foot/minute nominal speed
- Self-locking nut ensures passenger safety in the event of a power failure
- Anti-skid coating applied to platform to ensure safe footing
- Painted steel cab walls

ADDITIONAL OPTIONS

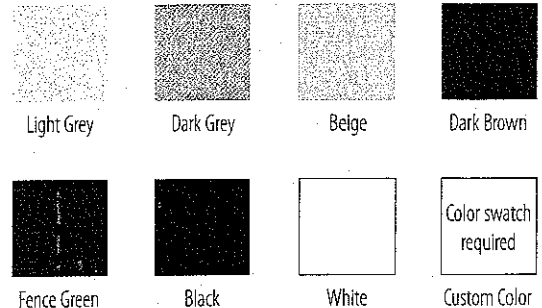
- Aluminum framed enclosure finished in gloss powder baked enamel paint with a choice of steel, clear plexi, bronze plexi, clear tempered glass or clear laminated safety glass inserts
- Sloped roof or dome roof package offers protection from the elements
- Thermostatically controlled ventilation kit
- Motion sensor lighting package
- Selection of landing gates and platform gates c/w elevator safety interlocks
- Selection of cab shapes and sizes to suit any application
- Handsfree-telephone available for your commercial applications
- Choice of Pro manual or Pro auto fire rated doors on hydraulic unit only



Standard Powder Coat Finish

Architectural White

Optional Powder Coat Finishes



The colors shown are reproduced using printing techniques. Actual results may vary slightly.

Warranty:

The Concord Limited Warranty covers the repair or replacement of any defective parts for a period of 26 months from date of shipment.

Concord Elevator, Inc.

107 Alfred Kuehne Blvd.

Brampton, ON L6T 4K3

Tel: 905-791-5555 • Fax: 905-791-2222

Toll-free: 1-800-661-5112 (Continental US & Canada)

info@concordelevator.com

www.concordelevator.com



RECEIVED

MAR 11 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

**CPR Properties LLC
The Counseling Center PC
319 Park St. (124 W. Hill St.)
Plainwell, MI 49080**

March 6, 2008

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Division
P.O. Box 30255
Lansing, MI 48909

Dear Sir/Madam:

The attached Application for Barrier Free Design Rule Exception is presented by CPR Properties LLC and The Counseling Center PC for an existing building at 319 Park St. (124 W. Hill St.) in Plainwell, MI.

The existing building was originally built to be an American Legion Hall and is believed to be approximately 50 years old. Most recently the building was occupied as a child day care center.

The main part of the building is a ¾ basement style building of 2400 square feet. From the architectural drawing you can see the entrance way was built on the north end of the building with six foot wide concrete steps going down to the main level of the building. Also in this area is an existing lift to lower those unable to utilize the steps the 5 feet 8 inches to the lower level. This lift is operational and has been in use up until the time the property was purchased by CPR Properties LLC.

CPR Properties LLC and The Counseling Center PC are entities established by Cheryl Parente-Roggow and John Roggow for the purpose of Cheryl, a licensed clinical social worker, opening a family counseling center in the building. This is a by appointment only type of business and will have a limited amount of cliental on a daily basis.

As part of the renovation to the building Freedom Lift Inc. (Richard Thomas) was contacted to certify the existing lift. It was then we were informed that the existing lift had never been certified and a new lift was required. Additionally, the space available at the lower landing no longer meets the requirement of the code and an exception would be required for certification. From the last step to the outer wall of the building at the bottom landing is 3' 10" versus the required 5 feet. In order to modify this area to meet the code would require a total reconstruction of the entryway and stairs.

This area does provide the needed space to install a P.A.L. Vertical Wheelchair Platform Lift (Flyer enclosed) and the necessary space to roll off and make the right turn into the main part of the business.

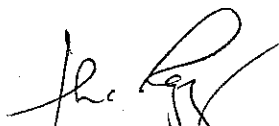
Due these issues we are submitting this application for and exception to the code.

Please contact us with any questions you may have concerning this issue.

Sincerely,



Cheryl C. Parente-Roggow
(Home) 269-685-3413
(Cell) 269-806-4627



John C. Roggow
(Cell) 269-217-7389

Jurisdiction of

PLAINWELL CITY

BUILDING
PERMIT

DEPT. FILE COPY

AMOUNT
PAID

CHECK #5453

VALIDATION

Telephone No. 269-685-6074

DATE SEPTEMBER 26, 2007

PERMIT NO. 27025

X APPLICANT STEVE HENDERSON

ADDRESS 623 PIERCE ROAD

COMMERCIAL

(NO) (STREET)

PLAINWELL, MI 49080

(CONTR'S LICENSE)

PERMIT TO INTERIOR ALTERATION

STORY BUSINESS OFFICES

NUMBER OF DWELLING UNITS ZERO

(TYPE OF IMPROVEMENT)

NO

(PROPOSED USE)

AT (LOCATION) 124 W. HILL STREET

(NOW 319 PARK STREET)

ZONING DISTRICT

BETWEEN PARK & S. MAIN ST.

AND

(CROSS STREET)

SUBDIVISION

LOT #

PARCEL # 55-350-023-00

LOT SIZE

BUILDING IS TO BE 45' FT. WIDE BY 67' FT. LONG BY 13' FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 5B

USE GROUP B

BASEMENT WALLS OR FOUNDATION

EXISTING CONCRETE

(TYPE)

EXPIRATION OF PERMIT: A permit remains valid as long as work is progressing and inspections are requested and conducted. A permit shall become invalid if the authorized work is not commenced within six months after issuance of the permit or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work. A PERMIT WILL BE CANCELLED WHEN NO INSPECTIONS ARE REQUESTED AND CONDUCTED WITHIN SIX MONTHS OF THE DATE OF ISSUANCE OR THE DATE OF A PREVIOUS INSPECTION. CANCELLED PERMITS CANNOT BE REINSTATED.

REMARKS:

ZONING # Jan 8, 2007

THERE WILL BE FOUR OFFICES, CONFERENCE ROOM, ONE

SEPTIC # N/A

NEW SINGLE OCCUPANCY RESTROOM PLUS ONE EXISTING.

SOIL EROSION # N/A

A UTILITY ROOM, WAITING AREA, AND RECEPTION AREA.

NOTE* TO BE CONSTRUCTED AS PER THE 2003 MICHIGAN BUILDING CODE & ANSI 117.1

If work is started before permit is applied for,
an additional fee will be charged.

Plan Review Fee	100.00
Deposit	0.00
Permit Fee	400.00
Total	500.00

AREA OR VOLUME REMODEL AREA 2,400 SQ. FT.

(CUBIC / SQUARE FEET)

ESTIMATED COST \$ 100,000
(INCLUDING LABOR)

OWNER John & Cheryl Raggow

PH. # 269-217-7389

ADDRESS 319 Park Street, Plainwell, MI. 49080

RECEIVED

MAR 1 1 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Division
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133

77 502

Application Fee: \$300.00

Authority: 1986 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME CPR PROPERTIES LLC THE COUNSELING CENTER PC		STREET / SITE ADDRESS 319 PARK ST (124 W. Hill)	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of PLAINWELL		COUNTY AUGER	
Estimated Project Cost \$ 100,000		Estimated Cost of Compliance \$ 60,000	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number 27025	
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP B
			CONSTRUCTION TYPE 5B
Project Does Not Comply With Barrier Free Design Requirements As Follows: Access to office level, existing chair lift does not meet current standards. Michigan Building Code Section(s) 1104.0 Art. 1104.4 Reason for Non-Compliance ANSI 117.1 Section 305 - clear floor or ground space			
NAME Kirk R. Scharphorn		ENFORCING AGENCY CITY OF PLAINWELL	
ADDRESS 1575 142nd Street		CITY Dorr	TELEPHONE NUMBER (Include Area Code) 616-877-2000
		ZIP CODE 49323	FAX NUMBER (Include Area Code) 616-877-4455
BUILDING OFFICIAL SIGNATURE (Must be an original signature) Kirk R. Scharphorn			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME Rob Busk		MICHIGAN LICENSE NUMBER 23556	
ADDRESS 371 6th St		FIRM NAME 1ST STEP DESIGN	
CITY PLAINWELL	STATE MI	ZIP CODE 49080	TELEPHONE NUMBER (Include Area Code) (269) 207-4955
1805 BYRON CENTER AVE BYRON CENTER		STATE MI	ZIP CODE 49315
		TELEPHONE NUMBER (Include Area Code) (616) 583-1601	
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE Cheryl C Parente-Rogrow		COMPANY NAME The Counseling Center	
ADDRESS 319 Park Street		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) 117	
CITY Plainwell	STATE MI	ZIP CODE 49080	TELEPHONE NUMBER (Include Area Code) 269-685-9401
		FAX NUMBER (Include Area Code) 269-685-9403	
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.		DATE 2/9/2008	
APPLICANT SIGNATURE (Must be an original signature) Cheryl C Parente-Rogrow			

RECEIVED

APR 18 2008

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

In the matter of

Eagle Creek Condominiums
3485 - 3689 Eagle Creek
Shelby, MI

Docket No. 2008-382

Agency No. 77777

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

Issued and entered
this 18th day of April, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on April 7, 2008, in Lansing Michigan. Present were Jill Sorgi, Marketing Director, and Gary Merigan, Attorney, representing the Applicant, Tim Wood, Building Official for Shelby Charter Township, and Usha Menon representing the Plan Review Division.

5. EXCEPTION APPLICATIONS
10. 77777

ISSUES

Should the Applicant be granted an exception from Section 1107.6.3 of the 2003 Michigan Building Code (MBC)?

FINDINGS OF FACT

The Applicant plans to construct 10 two story buildings with 6 condominium units in each building and two buildings with 4 units for a total of 68 units. Half of each building's units are on the first floor and the rest on the second floor. It is expected that the cost will be one million dollars for each building. As of the hearing date, 6 buildings have been constructed and one additional is almost complete. Twenty eight units have been sold. Fourteen of these are first floor units. Four first floor units have been built and are unsold.

The units are between 1300 and 1500 square feet each. They are being sold for between \$160,000 and \$163,000. The purchasers of the 14 first floor units were not told the bathrooms did not satisfy the Type B requirements. However, none of the purchasers raised this issue.

Building Official Wood confirmed that during the Master Plan Review, the review did not notice that the plans omitted Type B bathrooms in the first floor units. For this reason the 14 already sold first floor units and the four built but unsold units do not fully comply with the Type B requirements. Building access and kitchen space requirements have been met but the bathrooms were not built as Type B units.

Now that the issue has been raised, Attorney Merigan testified that all future construction will comply with the Type B requirements. In order to modify the already built but unsold four units, substantial reconstruction would be necessary. The post hearing

statement received April 10, 2008 and the addendum received April 15, 2008 provides detail as to this reconstruction. As noted in this submission, site limitations are involved with unit 3504. The driveway for this location has a steeper slope than permitted due to wetland to the west. (The building had to be raised.) The driveway slope cannot be corrected because there is limited space between the road and the garage. The April 15, 2008 addendum points out that this driveway is the only accessible route to the unit.

Structural limitations are also involved because weight bearing walls would have to be moved and the second floor supported to modify the bathroom. Substantial costs would be involved with this activity and also the need to move plumbing fixtures. The cement floor would have to be cut to remove and relocate plumbing lines.

The Applicant's submission also points out that each unit currently has expenses of \$162,500. The additional costs to correct the four units at issue are estimated to be between \$11,500 and \$31,500 for three units - 3689, 3683, and 3552. The estimate for correcting unit 3504 is between \$23,500 and \$43,500.

Under the caption Economic Conditions, on page 3 of the Post Hearing Submission, the Applicant makes the following observations:

Last year these units were selling for \$200,000.00 plus which provided some profit margin for the Developer/Owner.

Due to the economic crisis in Michigan the anticipated selling price is approximately \$155,000 to \$165,000.00

Any sale less than \$162,500.00 would result in a net loss and probably would not close since the Bank would not sign off and the Developer/Owner has no outside funds to make up any shortfalls.

In the event that it is required to make these units BFD

complaint, such compliance would result in additional out of pocket expenses which could not be recovered by any future sale.

The mere cost to comply would likely result in the unit not being sold at all resulting in economic hardship not only to the Developer/Owner but the numerous trades who have liens against the properties who could only be paid upon closing.

The Applicant requests the Board's permission to sell the four unsold first floor units as other than Type B if the purchasers are willing to accept these units as built. As noted above, future first floor units will fully comply with Type B requirements. Future construction will be determined based on market conditions

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1107.6.3 of the 2003 MBC provides:

1107.6.3 Group R-3. In occupancies in group R-3, where there are 4 or more dwelling units or sleeping units intended to be occupied as a residence in a single structure, every dwelling and sleeping unit intended to be occupied as a residence shall be a type B unit.

Exception: The number of type B units may be reduced in accordance with section 1107.7 of the code.
R 408.30427

The Applicant has demonstrated compelling need based on an error in the Master Plan review, site limitations, structural limitations, and substantial costs for reconstructing the four unsold units. As noted in the post hearing submission from Attorney Merigan, it would cost a large sum to reconstruct the existing bathrooms in the four units to satisfy the Type B requirements. And, with respect to unit 3504, it will be impossible to fully comply due to site limitations.

Any additional expenses will make the project a loss for the developer and the building trades.

All future construction will meet all Type B requirements.

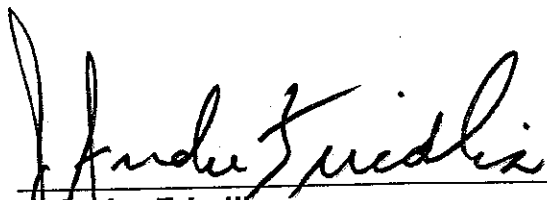
The Applicant will alert prospective purchasers of the four unsold units that the units do not fully satisfy the Type B requirements.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1107.6.3 of the 2003 MBC for the four built but unsold condominium units.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

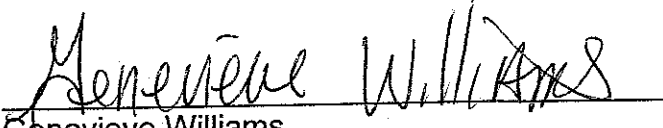
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 11th day of April, 2008.


Genevieve Williams
State Office of Administrative Hearings and Rules

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Jill Sorgi
SRV Eagle Creek Ltd Part
Eagle Creek Condominiums
48723 Hayes Road
Shelby Township, MI 48315

Timothy Wood
Charter Township of Shelby
52700 Van Dyke
Shelby Township, MI 48316

APR. 29. 2008 2:50PM

SABLE HOMES 586 726 9382

NO. 026 P. 1/2

RECEIVED

APR 29 2008

Eagle Creek Development Company

48723 HAYES ROAD
SHELBY TOWNSHIP, MI 48315

(O) (586) 726-3232
(F) (586) 726-9382

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Fax

To: J. Andrade Friedlis

From: Jill Sorgi/Gary Merigan

Fax: 517-335-6696

Pages: 2 Total with Cover Page

Phone: 517-335-2484

Date: April 29, 2008

Re: Docket No. 2008-382

CC: Usha Menon

Eagle Creek Condominiums

Tim Wood

Request for Clarification

☐ Urgent ☐ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

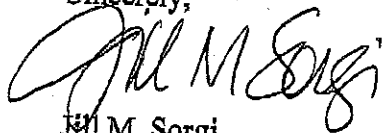
• Comments:

Dear Sir,

We would request in order so that all 18 units obtain the benefit of a Barrier Free Design exception that you would please consider adding those units to the Recommended Decision on Docket No. 2008-382.

Attached is a Request for Clarification setting forth specifically the reasons for this request.

Sincerely,



Jill M. Sorgi

Marketing Director

Sable Realty Ventures

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT NAMED ABOVE. THIS MESSAGE MAY CONTAIN PROPRIETARY INFORMATION, AND/OR MAY BE AN ATTORNEY-CLIENT OR OTHER PROTECTED COMMUNICATION, AND AS SUCH, IS PRIVILEGED AND/OR CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DESTROY THE ORIGINAL MESSAGE AND ALL COPIES.
THANK YOU.

**EAGLE CREEK CONDOMINIUMS
SHELBY TOWNSHIP, MICHIGAN**

**REPORT OF THE ADMINISTRATIVE LAW JUDGE
REQUEST FOR CLARIFICATION**

The petition referenced 18 non-complying units and the Recommended Decision only addressed the 4 unsold units.

The 14 sold units have temporary Certificates of Occupancy pending the barrier free design decision, which will require final inspections from the Township.

Consequently, unless the 14 sold units also are accepted, final Certificates of Occupancy will not be issued by the Township.

Petitioner requests that the 14 sold units be included in the Recommendation granting the relief requested.

Charter Township of Shelby

Harry Reese
Building Director

52700 Van Dyke
Shelby Township, MI 48316-3572

April 28, 2008

Phone: (586) 731-5969
Fax: (586) 803-2099
E-mail: building@shelbytwp.org

Bureau of Construction Codes
P.O. Box 30254
Lansing, MI 48909
Attention Irvin Poke

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APR 29 2008

Re: Barrier Free Design Request, Docket No. 2008-382
Eagle Creek Condominiums
Clarification to Report of the Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Dear Mr. Poke:

I reviewed the Report of the Administrative Law Judge Procedural Findings, dated April 16, 2008, and offer the following clarifications:

- 1) **"...the review did not notice that the plans omitted Type B bathrooms" (third paragraph of Findings OF Fact)** - The plan review specifically mandated that Type B bathrooms be provided and the plans note that "all Type B dwelling units to be constructed in accordance with ICC/ANSI A 117.1". However, the plans that were eventually approved did not provide critical dimensions (e.g. sidewall to centerline of lavatory, etc.) and sufficient details for compliance.
- 2) **"Building access ... requirements have been met..." (third paragraph of Findings OF Fact)** . The application includes requests for accessible route exceptions to several of the units, including 3504, which is specifically mentioned in the report.
- 3) Although not mentioned in the report, the request for exception includes the issue of the exterior sliding door thresholds exceeding 3/4" without a bevel.

Thank you for the opportunity to comment.

Sincerely,


Tim Wood
Assistant Building Director

c. J. Andre Friedlis, Administrative Law Judge
Usha Menon, Plan Review Division, Bureau of Construction codes

**ADDENDUM
COMPELLING NEED ANALYSIS
REQUEST FOR EXCEPTION BFD
ACCESSIBLE ROUTE**

SITE LIMITATIONS UNIT 3504

Due to the configuration of the multiple condominium units contained in Building 3 (containing 6 units) the current location of the driveway is the only accessible route to the subject unit.

There is no other location on the premises which could serve as an alternate route to provide barrier free access to the subject unit.

The non-barrier free design driveway serves as the only accessible route to the subject unit and as a result of the site limitations an exception is requested from the BFD requirements as to slope and accessible route.

**EAGLE CREEK CONDOMINIUMS
SHELBY TOWNSHIP, MICHIGAN**

**COMPELLING NEED ANALYSIS
ECONOMIC HARDSHIP**

Applicant submits the following analysis in support of its Petition for an exception to the Barrier Free Design requirements on the following Compelling Need basis:

1. Site Limitations
2. Structural limitations
3. Severe economic difficulty

BACKGROUND

The Eagle Creek Condominium project consists of 68 residential condominium units of which 28 have been sold and 8 have been completed and unsold.

Of the completed units 18 units would require compliance with BFD.

Of these 18 units, 14 have been sold and are occupied by purchasers and are part of the Applicant's Petition for exception.

The Administrative Law Judge requested the cost estimates for making the remaining 4 unsold and unoccupied units compliant.

The four (4) unsold units are:

Unit 3689
3683
3552
3504

SITE LIMITATIONS UNIT 3504

The BFD requires a driveway slope not exceeding 1:20.

Unit 3504 exceeds this slope dramatically due to the site limitations as to grade and elevation. There ARE wetlands to the west of the subject building which resulted in raising the elevation of the Building which resulted in a corresponding increase in the driveway slope.

There is no way to reduce the slope due to the site restrictions (the distance between the road and the garage is static and to decrease the slope the distance of the driveway would have to be increased and there is no room for expanding the length of the driveway)

STRUCTURAL LIMITATIONS

Some of the non-compliant aspects deal with the size of the master and main bathrooms and the dimensional access to these rooms. In order to comply with BFD it would necessary to move the two anterior walls approximately 12 inches (12") each.

Since these are weight bearing walls the second floor would have to be structurally modified and re-designed to provide the weight bearing aspects of the walls.

SEVERE ECONOMIC DIFFICULTY

Some of the non-compliant aspects deal with the location of the plumbing fixtures in the master and main bathrooms. In order to comply with BFD it would necessary to cut out areas of the cement floor and relocate both water supply lines and drains.

The One pieced framed Doorwalls currently have a threshold which is 1 ½ inches and the BFD code requires no more than a ¾" rise.

All of the Doorwalls would have to be removed and scraped and new fresh style swinging doors would have to be replaced. This would also require a building plan change.

Estimated Cost to renovate 4 units

DEMOLITION: \$3,000.00 per unit

Master Bathroom & Main Bathroom

Remove Fiberglass shower & Fiberglass tub

Break up tile

Adjust Plumbing

Remove Cabinets

Remove Sinks

Remove Faucets

Remove Countertops

Remove Door Frames

REPLACE / REPAIR: \$6,500.00 - \$26,500.00 per unit

Master Bathroom

New Framing/Green
Board

\$400

Tile for shower

\$800

Reset Plumbing

\$500

New Countertop

\$500

New Cabinets

\$500

Replace door frame

\$150

Drywall work

\$200

Paint work

\$150

TOTAL

\$3,200

**Main
Bathroom**

New
Framing/Green
Board

\$400

New Fiberglass
Tub/Shower

\$900

Reset Plumbing

\$500

New

Countertop

\$500

New Cabinets

\$500

Replace door
frame

\$150

Drywall work

\$200

Paint work

\$150

TOTAL

\$3,300

- Notes: 1. May have to move toilet location
2. May have to move wall locations if bathroom is not large enough to accommodate the space needed. If walls are load bearing then they cannot be moved. Moving walls is estimated at \$20,000.00 per unit

DOORWALL: \$2,000.00 per unit

Remove current door wall and install a new door wall with a beveled threshold less than ¾" tall.

SLOPE ISSUE: \$12,000.00 per unit (1 unit only, 3504)

ESTIMATES

Units 3689, 3683, 3552 = \$11,500 – \$31,500 per unit
Unit 3504= \$23,500 – \$43,500 this unit

PRACTICAL ECONOMIC CONSIDERATIONS:

Loan Balances:

The financial institutions currently have mortgages on the land and improvements.

The current Balances per unit are as follows:

Land Loan	\$ 55,000.00
Construction Loan	\$100,000.00
 Total Due Bank	 \$155,000.00

Closing Costs:

Transfer Taxes	
Revenue Stamps	
Title Insurance	
Real Estate Commissions	\$ 7,500.00
 Total Expenses Per Unit	 \$162,500.00

Economic Conditions:

Last year these units were selling for \$200,000.00 plus which provided some profit margin for the Developer/Owner.

Due to the economic crisis in Michigan the anticipated selling price is approximately \$155,000 to \$165,000.00.

Any sale less than \$162,500.00 would result in a net loss and probably would not close since the Bank would not sign off and the Developer/Owner has no outside funds to make up any shortfalls.

In the event that it is required to make these units BFD compliant, such compliance would result in additional out of pocket expenses which could not be recovered by any future sale.

The mere cost to comply would likely result in the unit not being sold at all resulting in economic hardship not only to the Developer/Owner but the numerous trades who have liens against the properties who could only be paid upon closing.

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MAR 18 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Attachment 1

Barrier Free Design Exception Request

Project: Eagle Creek Condominiums, Shelby Township, Michigan

Background

The overall project consists of 10 six-unit and 2 four-unit residential structures designed under the 2003 Michigan Residential Code (MRC).

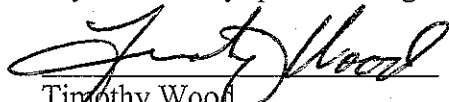
Pursuant to Section 1107.6.3 of the 2003 Michigan Building Code (MBC), as referenced by Section R322 of the MRC, Type B accessible units are required. After applying the exceptions of Section 1107.7 of the MBC, only the grade floor units are required to meet the requirements for Type B accessibility.

At this point in the project, six buildings are completed and one is under construction. Of the completed buildings, 18 units are required to meet Type B dwelling accessibility requirements. During construction and after many of those units were granted occupancy approval; our department realized the design and construction was not fully compliant with accessibility requirements. Initial design, construction and plan review errors all contributed to the oversight. Inasmuch as the buildings are all alike, the problems were replicated until discovery. The specific deficiencies are outlined in Attachment 2.

To remedy this matter, the builder intends on fully complying with code requirements for the remaining units. For those that are already completed, the builder intends to seek a Barrier Free Design Exception.

As you will note in Attachment 2, the primary deficiencies involve the bathrooms. The deficiencies noted are based on applying the provisions of Option B from ICC/ANSI A117.1-1998 to the main bathroom. As an alternative, the provisions of Option A could be applied but, in either case, the bathrooms are not compliant.

If you have any questions regarding this matter, please contact me at 586-731-5969.


Timothy Wood
Assistant Building Director
Charter Township of Shelby

3/11/08
Date

77 777

01-16 N

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MAR 16 2008

Application for Barrier Free Design Rule Exception

133

Michigan Department of Labor & Economic Growth

Bureau of Construction Codes / Plan Review

P.O. Box 30255, Lansing, MI 48906

517-241-9328

www.michigan.gov/bcc

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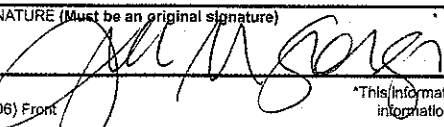
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application Fee: \$300.00

Authority: 1966 PA 1	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.
Completion: Mandatory	
Penalty: Exception will not be granted	

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION				
FACILITY NAME Eagle Creek Condominiums			STREET / SITE ADDRESS See attached	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Township Of: Shelby			COUNTY Macomb	
Estimated Project Cost \$ 525,000.00			Estimated Cost of Compliance \$	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input checked="" type="checkbox"/> New Building(S) <input type="checkbox"/> Alteration <input type="checkbox"/> Change of Use			Building Permit / File Number SEE ATTACHMENT 2	
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED? PERMANENT	USE GROUP MRC (R-3)	CONSTRUCTION TYPE VB
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) SEE ATTACHMENTS 1 AND 2 Reason for Non-Compliance				
NAME TIM WOOD, ASSISTANT DIRECTOR		ENFORCING AGENCY CHARTER TWP OF SHELBY		TELEPHONE NUMBER (Include Area Code) 586-731-5969
ADDRESS 52700 VAN DYKE		CITY SHELBY TWP	ZIP CODE MI	FAX NUMBER (Include Area Code) 586-803-2099
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 				
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
NAME Frank Salamone		MICHIGAN LICENSE NUMBER 1301048199		FIRM NAME Frank Salamone Architects
ADDRESS 48701 Hayes Road		CITY Shelby Township	STATE MI	TELEPHONE NUMBER (Include Area Code) (586) 254-1007
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE Jill Sorgi		COMPANY NAME SRV - Eagle Creek Ltd. Part.		
ADDRESS 48723 Hayes Road		CITY Shelby Township	STATE MI	TELEPHONE NUMBER (Include Area Code) (586) 726-3232
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.				FAX NUMBER (Include Area Code) (586) 726-9382
APPLICANT SIGNATURE (Must be an original signature) 			DATE 3.10.08	

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APR 29 2008



BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

CMAD / Ambleside Community School

3816 Toledo Avenue, Detroit, MI 48216
Phone: (313) 841-6848
Fax: (313) 841-6848

5. EXCEPTION APPLICATIONS
01. 39851

April 25, 2008

Barrier Free Design Board
c/o Irvin J. Poke, AIA
P.O. Box 30254
Lansing, MI 48909

RE: Exception No. 2004-411

Dear Mr. Poke:

I am writing to request an extension on our five-year exception for Barrier-free Design compliance granted to us by your organization on July 9, 2004. Initially, we requested five years with plans of occupying the building in the fall of 2004, but we did not actually open the school until September 2006, due to delays in receiving our Certificate of Occupancy.

Originally, our five-year plan was to open at this location in 2004, build our student body and resources, and begin looking for a new location by the fall of 2007, with occupancy scheduled for no later than 2009. Currently, due to low enrollment and limited resources these goals were not met, and we do not have the finances to move or meet the Barrier-free requirements.

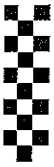
In lieu of this, considering the fact that we have been operating for only two of the granted five-years, we would like to apply for an extension of the design exception. Please advise us, at your earliest opportunity, on the application process.

Thank you for your time and consideration of this request. If you have any questions, I can be reached at (313) 841-6148.

Sincerely,

Evelyn Hoey
Administrator

It is the policy of the Charlotte Mason Association of Detroit and Ambleside Community School
to provide equal opportunity to all applicants
without regard to race, color, gender, national origin, or religious affiliation.



CMAD/Ambleside Community School

3816 Toledo Avenue

Detroit, MI 48216

Phone: 313.841.6848

Fax: 313.841.6848

cmad_Ambleside@sbcglobal.com

To: Irvin J. Poke

From: Evelyn Hoey, Ambleside Administrator

Fax: 517 241-9308

Date: May 8, 2008

Phone:

Pages: 2

Re: Barrier-free Exception No. 2004-411

CC:

As requested by you, enclosed is a letter containing more specific information concerning our request for an extension of our exception.

Thank you,
Evelyn Hoey

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MAY 08 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RECEIVED

MAY 08 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION**CMAD / Ambleside Community School**3816 Toledo Avenue, Detroit, MI 48216
Phone: (313) 841-6848
Fax: (313) 841-6848

May 08, 2008

Barrier Free Design Board
c/o Irvin J. Poke, AIA
P.O. Box 30254
Lansing MI, 48909.

RE: Exception No. 2004-411

Dear Mr. Poke,

On July 9, 2004, the Barrier Free Design Board granted Ambleside Community School a five-year exception for barrier-free design compliance. At that time we asked for 5 years, with the hope of occupying the building in the fall of 2004. Due to lack of funds, we did not get a Permanent Certificate of Occupancy until September 2006. Consequently, we did not open our school until then.

Our original five-year plan was to open at this location in 2004, build up our student body and resources, and begin to look for a new location by the fall of 2007, with occupancy scheduled for no later than 2009. Unfortunately, not only were we unable to open on time, but also, to date, we have 12 students enrolled and we do not have the finances to move or meet the Barrier-free requirements.

We request that your Board extend our exception for an additional five years, through the end of the 2013-2014 school year. The school does not pay rent in this building, and if we cannot continue here we will have to close our doors at the end of the next school year. While we do not serve a large number of students, the educational opportunity we offer is important to the families we serve. We appreciate your time and consideration of this matter.

Sincerely,

Evelyn Hoey

Administrator, Ambleside Community School

**MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES & FIRE SAFETY
BARRIER FREE DESIGN BOARD**

**2501 Woodlake Circle
Okemos, MI 48864**

**Project No. BFD-04-50041
Exception No. 2004-411
Use Group: E**

**3816 Toledo
Detroit, Michigan
Wayne County**

ORDER OF THE MICHIGAN BARRIER FREE DESIGN BOARD


On July 9, 2004, the Barrier Free Design Board reviewed the Report of the Administrative Law Judge dated June 3, 2004. All supplemental materials received before the Board meeting were reviewed. Copies were sent to all parties. This order is issued pursuant to Section 5(6)(a) of 1966 P.A. 1, as amended; 1972 P.A. 230, as amended; and Section 81 of 1969 of P.A. 306, as amended, and Rule R 125.1016. Appeal of the Board's Order must be filed on or before 60 days of its date in accordance with 1969 P.A. 306.

FINDINGS AND CONCLUSIONS: The Board adopted the report of the Administrative Law Judge. The Board concurs with the Conclusions of Law and Recommendation.

THEREFORE, it is the order of the Board to grant an exception from the requirements of the following sections for a period of 5 years. The exception granted by this order will expire on July 09, 2009. The building must be in full compliance no later than the expiration date of this ordered relief.

- 2003 MBC, Section 1104.4 for interior vertical barrier free access to the second floor.
- 2003 MBC, Section 1109.2 for providing accessible toilet facilities.

The Board can only grant or deny exceptions to Michigan's barrier free design requirements. The Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.



Irvin J. Poke, AIA
Chief, Plan Review Division for the
Barrier Free Design Board

July 20, 2004

**THE ORDER SHALL BE DISPLAYED IN A CONSPICUOUS LOCATION FOR
PUBLIC EXAMINATION AS A CONDITION OF THE EXCEPTION.**

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS

In the matter of

Docket No. 2004-411

Ambleside Community School
3816 Toledo
Detroit, MI 48216

Agency No. BFD 04-50041

Agency: Bureau of
Construction Codes
& Fire Safety

Applicant

Case Type: Barrier Free Design
Exception Request

Issued and entered
this 3rd day of June 2004
by J. Andre Friedlis
Administrative Law Judge

JUN - 4 2004

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on May 17, 2004, at the Department of Labor & Economic Growth, Bureau of Hearings, 2501 Woodlake Circle, 1st Floor, Okemos, Michigan. Present were

Evelyn Hoey, Administrator and President of the Board of Directors; and Tom Leger, school board member; representing the Applicant and Usha Menon, representing the Barrier Free Design Division.

ISSUE

Whether exceptions should be granted from Sections 1104.4, and 1109.2 of the 2003 Michigan Building Code (MBC).

FINDINGS OF FACT

The Applicant is currently using a two-story structure as a private school. They are requesting a five-year time exception, during which period they will explore other sites for a permanent location.

This two-story structure is located adjacent to a church. In return for being able to use the building rent-free, the Applicant will spend up to \$30,000 making certain improvements to the structure. These improvements include bringing three stairwells up to code. This includes widening the stairways and modifying the landings, replacing four to six windows to provide exit points, replacing a barrier free accessible ramp on the north side of the structure, installing panic hardware on exit doors, replacing a platform outside one of the exits, redesigning interior doors to push out, providing a battery backup for the fire alarm system and providing a sprinkler system in the basement.

This school began one-year ago, and is completing its second year in operation. There are currently 21 students in the school. The students are being taught in three classrooms located on the first floor. One classroom provides education for kindergarten, first and second grades. The second classroom provides education for the

third through the fifth grades. The third classroom provides education for the sixth through the eighth grades.

As the years progress, the school hopes to attract other students, up to a maximum of 60. Eventually, the school hopes to provide education from kindergarten through high school.

Although neither of the Applicant's representatives knew for certain, it was suspected that the vertical distance between the two floors was greater than 12-feet. As explained by Ms. Menon, if the distance is greater than 12-feet, an elevator would be necessary to provide access between levels. The Applicant estimated that a platform lift would cost \$30,000. An elevator would cost substantially more.

Although each of the two levels contains 5,000 square-feet, the school is only using between 3,500 and 4,000 square feet of the second floor and 2,000 square-feet on the first floor. The first floor will have barrier free access, after replacement of the ramp on the north side of the building. The second floor contains the gymnasium.

The Applicant estimated that it would cost \$30,000 to provide a barrier free bathroom. This would include moving walls or creating a separate first floor barrier free facility.

The school employs three teachers, one for each of the classrooms described above. In addition, three teachers come to the school on contract to teach art, music, and Spanish.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1104.4 of the 2003 MBC addresses bathrooms in pertinent part:

Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities.

Section 1109.2 of the 2003 MBC addresses bathrooms in pertinent part:

Toilet and bathing facilities: Toilet rooms and bathing facilities shall be accessible ... At least 1 of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible.

Compelling need based on cost and limited use has been presented to justify five-year time exceptions. The Applicant has a small number of students, currently 21, and at most, six teachers. The use of the school will be limited to, at most, five years. During this time, the Applicant will be searching for a nearby site that will satisfy barrier free access and bathroom requirements.

Replacing the exterior ramp on the north side of the building will allow students with disabilities to enter the school and take part in instruction.

RECOMMENDED DECISION

I recommend the Board grant the Applicant a five-year time exception from the provisions of Sections 1104.4 and 1109.2 of the 2003 Michigan Building Code.

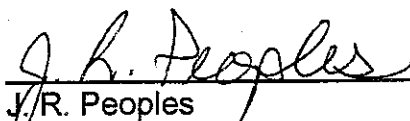
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 340 day of June, 2004.

A handwritten signature in dark ink, appearing to read "J. R. Peoples", is written over a horizontal line.

J. R. Peoples
Bureau of Hearings

Thomas Leger
Ambleside Community School
3816 Toledo
Detroit, MI 48216

Usha Menon
Bureau of Construction Codes and Fire Safety
Plan Review Division
2501 Woodlake Circle
P.O. Box 30254
Lansing, MI 48909

Bureau of Construction Codes and Fire Safety
Plan Review Division
c/o Irvin J. Poke
2501 Woodlake Circle, Box 30254
Okemos, MI 48864

Application for Barrier Free Design Rule Exception

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Michigan Department of Labor & Economic Growth

Bureau of Construction Codes & Fire Sa

Plan Review Division

P.O. Box 30255

Lansing, MI 48909

517/241-9328

BFD-04-50041

Application Fee: \$200.00

Authority: 1966 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION					
FACILITY NAME <i>Amble Side Community School</i>			ADDRESS <i>3816 Toledo</i>		
NAME OF CITY, VILLAGE, OR TOWNSHIP IN WHICH THE FACILITY IS LOCATED <input checked="" type="checkbox"/> CITY <input type="checkbox"/> VILLAGE <input type="checkbox"/> TOWNSHIP OF: <i>Detroit</i>				COUNTY <i>Wayne</i>	
ESTIMATED PROJECT COST \$ <i>13,500.00</i>			ESTIMATED COST OF COMPLIANCE \$		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project.)					
<input type="checkbox"/> NEW BUILDING <input checked="" type="checkbox"/> ALTERATION <input type="checkbox"/> CHANGE OF USE			BUILDING PERMIT/FILE NUMBER <i>S-04-20315</i>		
IS A TEMPORARY EXCEPTION REQUESTED? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			PERIOD OF TIME REQUESTED?	USE GROUP <i>E</i>	CONSTRUCTION TYPE
PROJECT DOES NOT COMPLY WITH BARRIER FREE DESIGN REQUIREMENTS AS FOLLOWS:					
MICHIGAN BUILDING CODE SECTION(S): <i>① NO VERTICAL ACCESS OTHER THAN STAIRS</i>					
REASON FOR NON-COMPLIANCE <i>② 1ST FLOOR BATHROOMS ARE NOT CURRENTLY HANDICAP ACCESSIBLE</i>					
NAME <i>USHA MENON</i>		ENFORCING AGENCY <i>BCCFS, State of MI</i>		TELEPHONE NUMBER <i>517-241-9328</i>	
ADDRESS <i>2501 WOODLAKE CIRCLE</i>		CITY <i>OKEMOS</i>	ZIP CODE <i>48864</i>	FAX NUMBER <i>517-241-9308</i>	
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>[Signature]</i>					
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)					
NAME <i>Jane J. Rayer</i>		MICHIGAN LICENSE NUMBER <i>41393</i>		FIRM NAME <i>Crossings Architecture Inc.</i>	
ADDRESS <i>561 Livermit</i>		CITY <i>Ferndale</i>	STATE <i>MI</i>	ZIP CODE <i>48220</i>	TELEPHONE NUMBER <i>288-545-2882</i>
APPLICANT (Note: All correspondence will be sent to this address)					
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <i>Thomas Léger</i>		COMPANY NAME <i>Amble Side Community School</i>		SOCIAL SECURITY NUMBER OR FEIN (REQUIRED)	
ADDRESS <i>3816 Toledo</i>		CITY <i>Detroit</i>	STATE <i>MI</i>	ZIP CODE <i>48216</i>	TELEPHONE NUMBER <i>313.418.5315</i>
I certify that the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.					FAX NUMBER
APPLICANT SIGNATURE (Must be an original signature) <i>Thomas Léger</i>				DATE <i>3.16.2004</i>	